

IN THE CIRCUIT COURT OF COLE COUNTY MISSOURI

Case No. 04-CV-323-144

SIERRA DESIGN GROUP

and

ARCADE PLANET INC.,

Plaintiffs,

vs.

MISSOURI GAMING COMMISSION.

and

KEVIN MULLALLY

Defendants.

ANSWER TO PETITION

COMES NOW the Defendant Missouri Gaming Commission and Kevin Mullally and for their Answer to Plaintiffs' Petition states as follows:

1. Defendants admits each and every allegation of Paragraphs 1, 2, 3 and 4 of Plaintiffs' Petition.
2. Defendants admits allegation of Paragraphs 5 of Plaintiffs' Petition that Arcade Planet, Inc. is a California corporation in good standing with its principal place of business in Livermore, California, but denies the allegation that Arcade Planet does no business in Missouri in that Arcade Planet has over 500 registered customers who listed Missouri addresses with Arcade Planet.
3. Defendants denies each and every allegation of Paragraph 6 of Plaintiffs, Petition, defendant further states that Arcade Planet offered games to Missourians *in* which the player of the game risked something of value upon the outcome of a contest of a future contingent

event not under control of the player upon the understanding that the player will receive something of value in the event of a certain outcome. Thus, Arcade Planet was in violation of Chapter 572 RSMo.

4. Defendants states that it is without knowledge and belief sufficient to form a belief as to the truth of Paragraph 7 of Plaintiffs' Petition and therefore denies the same.

5. Defendants denies each and every allegation of Paragraphs 8 and 9 of Plaintiffs Petition, defendant further states that Arcade Planet, attempted to block Missourians from paying to play contests for something of value, but Arcade Planet does not have the technology to block players from specific jurisdictions.

6. Defendants states that it is without knowledge and belief sufficient to form a belief as to the truth of Paragraph 10 of Plaintiffs' Petition and therefore denies the same, defendants further state that Arcade Planet offered games to Missourians in which the player of the game risked something of value upon the outcome of a contest of a future contingent event not under control of the player upon the understanding that the player will receive something of value in the event of a certain outcome. Thus, Arcade Planet was in violation of Chapter 572 RSMo.

7. Defendants states that it is without knowledge and belief sufficient to form a belief as to the truth of Paragraph II of Plaintiffs' Petition and therefore denies the same.

8. Defendants admits each and every allegation of Paragraphs 12 and 13 of Plaintiffs' Petition.

9. Defendants states that it is without knowledge and belief sufficient to form a belief as to the truth of Paragraph 14 of Plaintiffs' Petition and therefore denies the same.

10. Defendants admits each and every allegation of Paragraphs 15, 16 and 17 of Plaintiffs' Petition.

11. Defendants states that it is without knowledge and belief sufficient to form a belief as to the truth of Paragraph 18 of Plaintiffs' Petition and therefore denies the same.

12. Defendants denies each and every allegation of Paragraph 19 of Plaintiffs' Petition.

13. Defendants admits each and every allegation of Paragraph 20 of Plaintiffs' Petition.

14. Defendants denies each and every allegation of Paragraphs 21, 22 and 23 of Plaintiffs. Petition.

15. Defendants states that it is without knowledge and belief sufficient to form a belief as to the truth of Paragraph 24 of Plaintiffs' Petition and therefore denies the same.

16. Defendants denies each and every allegation of Paragraph 25 of Plaintiffs' Petition.

COUNT I

17. Defendant adopts and incorporates by reference each response to Paragraphs 1 through 25 of the Plaintiffs Petition.

18. Defendant admits each and every allegation of Paragraph 27 of Count I of Plaintiffs' Petition.

19. Defendant denies each and every allegation of Paragraph 28 of Count I of Plaintiffs Petition.

20. Defendant denies each and every allegation of Paragraph 29 of Count I of

Plaintiff's Petition, further stating that when Arcade Planet allowed Missourians to risk something of value upon the outcome of a contest of a future contingent event not under control of the player upon the understanding that the player will receive something of value in the event of a certain outcome, Arcade Planet submitted itself to the jurisdiction of the state of Missouri, Section 541.033(2) RSMo.

21. Defendant denies each and every allegation of Paragraph 30 of Count I of Plaintiff's Petition.

COUNT II

22. Defendant adopts and incorporates by reference each response to Paragraphs 1 through 30 of the Plaintiffs Petition.

23. Defendant denies each and every allegation of Paragraphs 32 and 33 of Count II of Plaintiff's Petition

COUNT III

24. Defendant adopts and incorporates by reference each response to paragraphs 1 through 33 of the Plaintiffs Petition.

25. Defendant denies each and every allegation of Paragraphs 35 and 36 of Count III of Plaintiff's Petition.

26. Further stating Sierra Design has not proven its suitability to hold a suppliers license from the Missouri Gaming Commission. Holders of licenses from the Missouri Gaming Commission do not have a property interest in the license which would give rise to constitutional protection. Further, holders of licenses from the Missouri Gaming Commission can not bypass administrative proceedings by the Missouri Gaming Commission through a Writ of Prohibition,

see *Riverside Joint Venture v. Missouri Gaming Commission*, 969 S.W.2d 218 (Mo. banc 1998).

Wherefore, Defendant Missouri Gaming Commission and Defendant Kevin Mullally, having fully answered Plaintiff's Petition, prays that this Court dismiss Plaintiff's Petition; for its costs herein expended and for such other relief as the court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, on January 27, 2004 to:

James Deutsch

Thomas W. Rynard

Riezman & Blitz, P.C.

308 East High Street, Suite; 30] Jefferson City, Missouri 6510 1

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